

Form FHA 021-4

UNITED STATES DEPARTMENT OF AGRICULTURE  
RURAL DEVELOPMENT  
HARRISBURG, PENNSYLVANIA

TO:

State Office  
Area Office

STATE PROCEDURE  
NOTICE

ISSUE NO. 266

DATE: July 3, 2002

**RURAL DEVELOPMENT MANUAL CHANGE**

PA Instruction 4274-D

**Security Requirements**

The purpose of this State Procedure Notice is to clarify security issues and obtaining a Control Agreement in conjunction with Intermediary Relending Program requirements under 4274.326, regarding security. This section requires the Rural Business-Cooperative Service (RBS) to take a security interest in all assets currently in or hereafter placed in the intermediary's Intermediary Relending Program (IRP) revolving fund. Until the recent amendments to Article 9 of the Uniform Commercial Code, the manner of perfecting such a security interest, in order to prevail against a subsequent lien holder, was ambiguous. Now it is clear that a control agreement with the depository bank will perfect RBS's security interest in the IRP bank account.

**INSERT:**

PA Instruction 4274-D § 4279.326 (PA PN 266 dated July 3, 2002)

The following "pen and ink" change shall be made to the following National RD Instruction.

RD Instruction 4274 Subpart D, § 4274.326:  
See PA PN 266 dated July 3, 2002.

**PART 4274 - DIRECT AND INSURED LOANMAKING**

**Subpart D - Intermediary Relending Program (IRP)**

**§ 4274.326 Security.**

Rural Business-Cooperative Service (RBS) must take a security interest in all assets currently in or hereafter placed in the intermediary's Intermediary Relending Program (IRP) revolving fund.

IRP loan security will consist of a pledge by the intermediary of all assets now in or hereafter placed in the IRP revolving fund, including cash and investments, notes receivable from ultimate recipients, and the intermediary's security interest in collateral pledged by ultimate recipients.

Until the recent amendments to Article 9 of the Uniform Commercial Code, the manner of perfecting such a security interest, in order to prevail against a subsequent lien holder, was ambiguous. Now it is clear that a control agreement with the depository bank will perfect RBS's security interest in the IRP bank account.

The attached Draft Control Agreement will be provided to IRP applicant's legal counsel for preparation of a Control Agreement, in addition to other required loan closing documents, to be used to secure the collateral pledged by the intermediary.

After the loan has been approved, the State Office will submit all draft loan-closing documents, including the Control Agreement, for review by the Regional OGC.

**PA PN 266 Instruction 4274-D (7/3/02)**

**UNITED STATES DEPARTMENT OF AGRICULTURE  
RURAL BUSINESS-COOPERATIVE SERVICE**

**CONTROL AGREEMENT FOR DEPOSIT ACCOUNT**

**THIS DEPOSIT ACCOUNT AGREEMENT ("Agreement") is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by \_\_\_\_\_ and among \_\_\_\_\_, a \_\_\_\_\_ ("Bank"), \_\_\_\_\_, a \_\_\_\_\_ ("Company"), and United States of America, acting through the Rural Business Cooperative Service of the Department of Agriculture ("Secured Creditor").**

- A. Pursuant to that certain Loan Agreement dated \_\_ (date) \_\_ between Company and Secured Creditor, as amended, supplemented or otherwise modified from time to time (the "Loan Agreement"), Secured Creditor has agreed to make loans and extend other financial accommodations to Company.
- B. Company has established Account No. \_\_\_\_\_ with Bank (the "Deposit Account").
- C. The parties hereto desire to enter into this Agreement in order to set forth their relative rights and duties with respect to the Deposit Account and all funds on deposit therein from time to time.

NOW, THEREFORE, In consideration of the premises and the mutual covenants and agreements hereafter set forth, the parties agree as follows:

1. Security Interest: Agency. As collateral security for Company's obligations to Secured Creditor under the Loan Agreement and other loan documents described therein, Company hereby grants to Secured Creditor a present and continuing security interest in (a) the Deposit Agreement, (b) all contract rights, claims, and privileges, with respect to the Deposit Account, and (c) all cash, checks, money orders, and other items of value of Company now or hereafter paid, deposited, credited, held (whether for collection, provisionally, or otherwise), or otherwise in the possession or under the control of, or in transit to, Bank or any agent, ballee, or custodian (collectively, "Receipts"), and all proceeds of the foregoing, and Bank acknowledges that this Agreement constitutes notice of Secured Creditor's security interest in that collateral and does hereby consent to the security interest. Secured Creditor appoints Bank as Secured Creditor's ballee and pledgee in possession for the Deposit Account and all Receipts, and Bank hereby accepts such appointment and agrees to be bound by the terms of this Agreement. Company hereby agrees to such appointment and further agrees that Bank, on behalf of Secured Creditor, shall be entitled to exercise, on the written instructions of Secured Creditor, any and all rights that Secured Creditor may have under the Loan Agreement, the other loan documents described therein, or under applicable law with respect to the Deposit Account, all Receipts, and all other collateral described in this paragraph.
2. Control of Deposit Account. The Deposit Account shall be under the sole dominion and control of Secured Creditor and Bank will comply with Secured Creditor's instructions directing disposition of the funds in the Deposit Account without further consent by Debtor. The Deposit Account shall be maintained by Bank in the name of "\_\_\_\_ (name of Company) \_\_\_\_." However, unless and until notice to the contrary is provided by Secured Creditor, in its sole discretion, to Bank, Company shall have the right from time to time to write checks against amounts from the Deposit Account. Before Bank's receipt of any such notice from Secured Creditor, Bank shall be entitled to honor Company's instructions and directions with respect to any transfer or withdrawal of funds from the Deposit Account.
3. Statements and Other Information. Upon Secured Creditor's request, Bank shall provide Secured Creditor with copies of the regular monthly bank statements provided to Company and such other information relating to the Deposit Account as shall reasonably be requested by Secured Creditor. Bank shall also deliver a copy of all notices and statements required to be sent to Company pursuant to any agreement governing or related to the Deposit Account to Secured Creditor at such times as provided therein.

**PA PN 266 Instruction 4274-D (7/3/02)**

4. Fees. Company agrees to pay on demand all usual and customary service charges, transfer fees, and account maintenance fees (collectively, "Fees") of Bank in connection with the Deposit Account. In the event Company fails to make a timely payment to Bank of any Fees, Bank may thereafter exercise its right of setoff against the Deposit Account for such amounts. Secured Creditor shall not have any responsibility or liability for the payment of any Fees.
5. Setoff. Bank hereby agrees that Bank will not exercise or claim any right of setoff or security interest or banker's lien against the Deposit Account or any Receipts on deposit therein and Bank hereby further waives until such date any such right or lien that it may have against any Receipts deposited in the Deposit Account, except to the extent expressly set forth in paragraph 4 above.
6. Exculpation of Bank; Indemnification by Company. Company and Secured Creditor agree that Bank shall have no liability to either of them for any loss or damage that either or both may claim to have suffered or incurred, either directly or indirectly, by reason of this Agreement or any transaction or service contemplated by its provisions, unless occasioned by the gross negligence or willful misconduct of Bank. In no event shall Bank be liable for losses or delays resulting from computer malfunction, interruption of communication facilities, labor difficulties, or other causes beyond Bank's reasonable control or for indirect, special, or consequential damages. Company agrees to Indemnify Bank and hold it harmless from and against any and all claims, other than those ultimately determined to be founded on gross negligence or willful misconduct of Bank, and from and against any damages, penalties, judgments, liabilities, losses, or expenses (including reasonable attorney fees and disbursements) incurred as a result of the assertion of any claim, by any person or entity, arising out of, or otherwise related to, any transaction conducted or service provided by Bank through the use of any account at Bank pursuant to the procedures provided for or contemplated by this Agreement.
7. Termination. This Agreement may be terminated by Company only upon delivery to Bank of a written notification jointly executed by Company and Secured Creditor. This Agreement may be terminated by Secured Creditor at any time, with or without cause, upon its delivery of written notice to Company and Bank. This Agreement may be terminated by Bank at any time on not less than 30 day's prior written notice delivered to Company and Secured Creditor. Upon delivery or receipt of such notice of termination to or by Bank, Bank will immediately transmit to such account as Secured Creditor may direct all funds, if any, then on deposit in, or otherwise to the credit of, the Deposit Account.
8. Irrevocable Agreements. Company acknowledges that the agreements made by it and the authorizations granted by it in paragraphs 1 and 2 are irrevocable and that the authorizations granted in paragraphs 2 and 3 are powers coupled with an interest.
9. Notices. All notices, requests, or other communications given to Company, Secured Creditor, or Bank shall be given in writing (including by facsimile) at the address specified on the signature page.
10. Miscellaneous.
  - a. This Agreement may be amended only by a written instrument executed by Secured Creditor, Bank and Company acting by their respective duly authorized representatives.
  - b. This Agreement shall be binding on and shall inure to the benefit of the parties and their respective successors and assigns, but neither Company nor Bank shall be entitled to assign or delegate any of its rights or duties under this Agreement without first obtaining the express prior written consent of the Secured Creditor.
  - c. This Agreement may be executed in any number of several counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**PA PN 266 Instruction 4274-D (7/3/02)**

- d. This Agreement shall be governed by federal law, which, for purposes of the Agreement, includes Article 9 of the Uniform Commercial Code as adopted in the Commonwealth of Pennsylvania.

**IN WITNESS WHEREOF, each of the parties has executed and delivered this Deposit Account Agreement as of the day and year first above set forth.**

Date:

Bank: (NAME OF BANK)  
a [specify entity, e.g., Pennsylvania  
Commercial bank]

By: [Signature]  
Name: [Typed name]  
Its: [Title]

Address:

Attention:  
Telephone:  
Facsimile:

Date:

Company: (NAME OF COMPANY)  
a [specify entity, e.g., Pennsylvania  
corporation]

By: [Signature]  
Name: [Typed name]  
Its: [Title]

Address:

Attention:  
Telephone:  
Facsimile:

Date:  
Service

Secured Creditor: USDA Rural Business Cooperative  
a Federal Agency

By: [Signature]  
Name: [Typed name]  
Its: [Title]

Address:

Attention:  
Telephone:  
Facsimile: